IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.13136 OF 2003

1. Mrs.Parvathy
2. Mr.Ocheeswaran .. Petitioners

-Vs-

1. The Post Master General,
Anna Salai Post Office,
Chennai-2.
2. The Senior Superintendent
of Post Office,
Chennai City North Division,
Chennai-23.
3. The Post Master,
Jawahar Nagger Post Office,
Perrier Nagger,
Chennai-82.
4. D.Baskar .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus as stated therein.

For petitioner : Mr.N.Ilangovan

For respondents : Mr.P.Bhaskara Reedy for RR1to3
ACGSC
Mr.K.Sellathurai for R4.

:O R D E R

The above Writ Petition has been filed by the petitioners praying to issue a Writ of Mandamus directing the respondents 1 to 3 to refund the matured sum of Rs.3,60,000/- together with interest accrued thereon in the MIS JAR A/c No.22234 and to award compensation for the inordinate delay in refunding the deposit and mental agony undergone by them.

2. In the affidavit filed in support of the above Writ Petition, the first petitioner would submit that she is a senior citizen; that her husband Mr.R.D.Shivappa had deposited a sum of Rs.3,60,000/- on 3.5 .1994 in MIS JNR

No.22234 in the Monthly Income Scheme(MIS) at Jawahar Nagger Post Office, the third respondent herein for a period of five years citing the name of the 4th respondent herein as the nominee; that subsequently, he had deleted the fourth respondent as nominee and included the first petitioner in the said account as joint depositor; that her husband passed away on 10.12.1996; that after the demise of her husband, she became the sole account holder and owner of the money deposited with the third respondent; that during the life time of her husband, he had received the monthly income/interest accumulated in the deposit and after the demise of her husband, as the sole/ joint account holder, she was receiving the monthly income/interest from the fixed deposit.

3. The first petitioner would further submit that after the demise of her husband, since they do not have any issue, she is residing with her relative Mr.Ocheeswaran, the second petitioner herein and she had included him as the joint account holder in respect of the said MIS JNR account No.22234; that on maturity of the said fixed deposit on 27.4.2000, the petitioners have claimed the amount; that though the petitioners complied with all the formalities as required by the second and third respondents way back in the month of April/May 2000, the respondents 2 an 3 had failed to refund the matured fixed deposit amount; that the second respondent had also stopped the payment of interest accrued on the fixed deposit to the petitioner; that on inquiry, the petitioners came to understand that the fourth respondent herein has also made a claim to the 2nd respondent on the ground that late R.D.Shivappa had executed a Will bequeathing the money deposited in the said account in his favor; that the fourth respondent has also filed a suit in O.S.No.5936 of 2000 on the file of the City Civil Court, Chennai for declaration and permanent injunction against the respondents 1 to 3 even without impleading the petitioners as parties to the said suit;

4. The first petitioner would further submit that the application filed by the petitioners for impleading them as defendants in the above suit was allowed with a direction to the 4th respondent to carry out the amendments in the plaint; that since the 4th respondent has failed to carryout the amendments in the plaint, the said suit was dismissed on 24.10.2002; that after the dismissal of the suit the second petitioner had lodged a formal claim to the third respondent on 26.10 .2002 seeking refund of the money held by the respondents 1 to 3; that since the third respondent refused to receive the same, the petitioners sent the said claim to the second and third respondents by registered post; that they have also produced copy of the order passed by the lower Court to the respondents 2 and 3; that even though the counsel for the respondents has given his opinion to the effect that there is no bar on the department to disburse the money to the petitioners, since the suit was dismissed they did not disburse the said amount; that admittedly, according to the rules of the postal department after the demise of one of the joint account holders, the money lying in a joint account will pass to the surviving depositor only, but the second respondent for the reason best known to him had wantonly withheld the disbursement of money to the petitioners. In such circumstances, the petitioners have come forward to file this Writ Petition, praying for the relief extracted supra.

5. In the counter affidavit filed by the respondents 1 to 3, besides

generally denying the allegations in the affidavit filed in support of the above writ petition, they would further submit that the petitioners are eligible to withdraw the money in the normal course, provided there is no contesting claim; that the fourth respondent has contested the claim amount in the credit of the above MIS account on the ground that late Shivappa had executed a Will in his favor besides filing a Civil Suit in O.S.No.5936 of 2000 on the file of the City Civil Court the respondents have no other alternative except to stop payment of interest; that the respondents have also filed their written statement and counter affidavits in time; that the department has no vested interest in paying the amount to either party as the case is to be decided by the Court. On such averments, they would pray for dismissal of the above writ petition.

6. In the counter affidavit filed by the 4th respondent he too, besides generally denying the allegations in the affidavit filed in support of the above writ petition, he would further submit that he is the nominee for receiving the amount deposited by his grand father late R.B.Shivappa on 3.5.1994; that the first petitioner is the first wife of late R.B.Shivappa; that since he had no issues through the first wife, with her consent, he got married with one Mrs.Komala as his second wife and begot children through her; that even though, the said deposit was made jointly in the name of R.B.Shivappa and the first petitioner, she has no right to claim the said amount since she is a mere name lender; that the said late R.B.Shivappa had executed a Will on 30.9.1996, out of his own volition and in a sound disposing state of mind, bequeathing all his properties and assets including the deposit made in Account No.JNR 22234 in favor of this respondent and hence he is only entitled to receive the said deposit amount; that with the active connivance of the Post Master, Jawahar Nagger Post Office, Chennai-82, the petitioners have unauthorisedly and clandestinely incorporated the name of one Rajendran and subsequently the name of the second petitioner as a nominee above the name of the fourth respondent without the knowledge and notice to him; that in any event any of the amendments or insertions made in the said deposit either in the name of the depositors or in the name of the nominee will not be binding on the fourth respondent, it will not confer any right on the person whose name was introduced at the instance of third parties. On such averments he would pray for dismissal of the above writ petition.

7. Heard the learned counsel appearing for the petitioner, and the respondents as well and the materials placed on record have also been perused.

8. During arguments, the learned counsel appearing for both the petitioner and the respondents as well would only reiterate the facts pleaded in the petition and the counter affidavits and hence this Court is of the view that repeating the same would only be a time consuming affair and hence it is only desirable to decide the matter on materials made available on record and in considseration of the law on the subject.

9. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that the husband of the first petitioner viz., late R.D.Shivappa had deposited a sum of Rs.3,60,000/- on 3.5 .1994 in MIS JNR

No.22234 in the Monthly Income Scheme(MIS) at Jawahar Nagar Post Office, the third respondent herein for a period of five years citing the name of the 4th respondent herein as the nominee. Subsequently, the name of the first petitioner was included in the said account as joint depositor. During the life time, the husband of the first petitioner had received the monthly income/interest accumulated in the said deposit. After the demise of her husband, the first petitioner was receiving the monthly income/interest from the fixed deposit as the sole/joint account holder. Since they do not have any issue, she is residing with her relative Mr.Ocheeswaran, the second petitioner herein and she had included him as the joint account holder in respect of the MIS JNR account No.22234. On maturity of the said fixed deposit on 27.4.2000, the petitioners have claimed the said amount. Though the petitioners have complied with all the formalities as required by the respondent 2 and 3 way back in the month of April/ May 2000, the respondents 2 an 3 had failed to refund the matured fixed deposit amount on the ground that the fourth respondent has contested the claim on the ground that late R.D.Shivappa had executed a Will bequeathing the money deposited in the said account in his favor and a civil suit filed by him is also pending before the City Civil Court, Chennai. But on the contrary it would be claimed on the part of the petitioners that the said civil suit has been dismissed.

10. It is a case in which the first petitioner who is a septuagenarian would come forward to allege that she is a joint depositor along with her husband for the deposit of the sum of Rs.3,60,000/- as on 3.5 .1994, and that the fourth respondent is only a nominee. So far as the joint depositors are concerned, in case if one of the depositors died, that is the first petitioner's husband Mr.R.D.Shivappa in the case in hand (reported to have died on 10.12.1996) the law is 'either or survivor'. The straight case of the first petitioner is that she being the survivor after the death of her husband the respondents No.1 to 3 should have refunded the matured sum in her favour which they have failed to do and therefore, besides praying for the said relief she is also claiming for the award of compensation for the inordinate delay caused in refunding the matured sum of Rs.3,60,000/- besides usual interest. The fourth respondent who was admittedly appointed nominee was a nominee not only for the deceased Shivappa but also for the first petitioner who is the sole survivor of the depositors and therefore, needless to mention that the fourth respondent is also a nominee of the first respondent.

11. So far as the nominee is concerned he is only the trustee after the depositors' demise and since one of the depositors is surviving it is difficult for the nominee to take the place of the depositor nor is he in any manner entitled to any right over the domain in his capacity as a nominee since the law on the subject is that he could play only a role of the trustee and his only business is to act in such capacity and to see that the surviving legal heirs of the deceased get the refund of the deposit sum and during the survival of one of the depositors the question of nominee coming to picture does not at all arise and therefore, as a nominee it could be decided that the fourth respondent has absolutely no right to cause any interference into the domain of the deposited amount and it is only the first petitioner who is entitled to get refund of the matured sum with the accrued interest.

12. So far as the other point raised on the part of the fourth respondent to the effect that the deceased Shivappa, one of the joint depositors, executed a Will bequeathing the money deposited in the said account in his favour as per the Will dated 30.9.1996, absolutely nothing is able to be seen that the said Will was registered nor did it come to light in any manner even to the knowledge of the joint depositor, the first petitioner herein and therefore, serious doubts could be caused on the said Will as it is claimed during the arguments by the learned counsel for the petitioner that it is manipulated and make believe document and moreover, the Civil suit initiated in O.S.No.593 6 of 2000 in the Court of City Civil Judge, Chennai for declaration and permanent injunction particularly when it comes to be claimed that it was dismissed by the said Court nor does it have any bearing on the surviving depositor and therefore, no importance need be attached for the said suit initiated on the part of the fourth respondent who has otherwise no right to interfere with the inviolable rights of the petitioner as a joint depositor over which even in the event of any Will executed on the part of the deceased depositor, the said Shivappa, since it is opposed to legal norms, it may not bind the rights of the surviving depositor since it is not any other property that can be brought under the Will but the first petitioner being the surviving depositor and in accordance with the dictum of law 'Either or Survivor' only the first petitioner is entitled to the deposit amount in its entirety and therefore, even if such a Will had been executed by the deceased Shivappa in favour of the fourth respondent it cannot in any manner bind the legal rights of the first petitioner to get the deposited amount with accrued interest and therefore, neither the Will alleged to have been executed in his favour nor the suit filed by the fourth respondent based on such a Will could have any baring on the domain of the deposited amount of which she is still surviving depositor entitled to the whole and now since she has made the second petitioner as joint depositor, both are entitled to the deposited sum and hence the following order:
In result,
(i) for the foregoing reasons assigned the above writ petition succeeds and the same is allowed to the extent indicated herein;

(ii) the respondents 1 to 3 are hereby directed to refund the matured sum of Rs.3,60,000/- together with interest accrued thereon in the MIS JAR A/c No.22234,the moment any one of the

gr
petitioners is able to produce the copy of this order;

(iii) however, in the circumstances of the case, there shall be no order as to costs.

Index:Yes
Internet:Yes
gr.
To

1. The Post Master General,
Anna Salai Post Office,

Chennai-2.

2. The Senior Superintendent
of Post Office,
Chennai City North Division,
Chennai-23.

3. The Post Master,
Jawahar Nagger Post Office,
Perrier Nagger,
Chennai-82.
15.10.2004